

1983 December 17

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS SMYRNIOS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 120/79).

*Public Officers—Promotions—“Seniority”—“Experience”—It necessarily includes the notion of “seniority”.*

*Public Officers—Promotions—Seniority—It only prevails if all other factors are equal—Seniority of applicant could not tip the scales in his favour in view of the better confidential reports of the interested parties.* 5

*Public Officers—Promotions—Head of Department—Recommendations—Adequacy of.*

The applicant and the interested parties were candidates for promotion to the post of Accounting Officer 2nd Grade in the Treasury Department. The Public Service Commission “after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview”, decided to promote the interested parties to the above post; and hence this recourse by the applicant. The Head of Department who was present at the relevant meeting of the Commission stated before the Commission that the services of all the interested parties, “had been very satisfactory and that he considered them suitable for the post of Accounting Officer, 2nd Grade”. 10 15 20

Applicant and the interested parties were more or less equally qualified but applicant was senior to them. Interested parties, however, had better confidential reports.

Counsel for the applicant mainly contended:

- 5           (a) That the respondent Commission in reaching the sub  
                   judice decision did not take into consideration the factor  
                   of seniority in respect of the candidates, contrary to  
                   the provisions of section 44(2) of the Public Service  
                   Law, 1967 (Law 33/67).
- 10           (b) That the overwhelming seniority of the applicant over  
                   the interested parties was disregarded by the Commis-  
                   sion without giving cogent reasons in this respect;  
                   as the applicant and the interested parties were more  
                   or less equal in merits and qualifications.
- 15           (c) That the recommendations of the Head of Department  
                   were void as having been made in an irregular manner.

20           *Held*, (1) that though it is correct that no express reference  
                   is made to "seniority" reference is expressly made to the  
                   "experience" of the candidates; that this factor together with  
                   other relevant factors was taken by the respondent Commission  
                   into consideration in reaching the sub judice decision and was  
                   given due weight; that "experience" includes necessarily the  
                   notion of "seniority"; that the Commission, having before it  
                   the personal files and the annual confidential reports of the  
 25           candidates and having taken into consideration, as it appears  
                   from its relevant minutes, the service, experience and the facts  
                   appertaining to each one of the candidates, had duly weighed  
                   the seniority of the candidates as well; accordingly contention  
                   (a) should fail.

30           (2) That seniority is not a decisive factor, but one of the factors  
                   to be taken into consideration by the administrative organ  
                   concerned in selecting the most suitable candidate for a parti-  
                   cular post, and that seniority prevails only when all other things  
                   are equal; that as the interested parties have better confidential  
 35           reports than the applicant the latter failed, to persuade the Court  
                   that his seniority ought to have tipped the scales in his favour or  
                   that the relevant discretion of the Commission had been exercised  
                   in a defective manner justifying the interference by this Court;  
                   accordingly contention (b) should fail.

(3) That the recommendations of the Head of Department were adequate enough for the purposes of the present promotions; accordingly contention (c) should fail.

*Application dismissed.*

Cases referred to:

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*Kolokotronis v. Republic* (1980) 3 C.L.R. 418 at p. 428;

*Ierides v. Republic* (1980) 3 C.L.R. 165 at p. 129;

*Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417 at p. 426;

*Morphis v. Republic* (1975) 3 C.L.R. 255 at p. 259;

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*Ioannides v. Republic* (1979) 3 C.L.R. 628 at p. 638.

### Recourse.

Recourse against the decision of the respondent to promote and/or second the interested parties to the post of Accounting Officer 2nd Grade in the Treasury Department in preference and instead of the applicant.

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*E. Efstathiou*, for the applicant.

*G. Constantinou*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

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DEMETRIADES J. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Public Service Commission, dated 2nd December, 1978, to promote, instead of him, the interested parties D. Solomou, I. Nicolaou, S. Demetriou, D. Mytilineos, A. Polycarpou, D. Antoniou, H. Yeroudes, Chr. Kyriacou, E. Georghiou, M. Afantitis, Chr. Christodoulou, K. Stefanou and M. Melis and to second the interested parties Th. Avraamides and L. Constantinou, to the post of Accounting Officer 2nd Grade in the Treasury Department as from the 15th December, 1978.

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According to the relevant scheme of service (enclosure 2) the post of Accounting Officer 2nd Grade is a first entry and promotion post. Both the applicant and the interested parties were serving in the immediately lower post of Accounting Officer 3rd Grade and were qualified for promotion to the post concerned.

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The Public Service Commission, after interviewing 34 candi-

dates, including the applicant, in the presence of the Accountant-General, at two meetings held on the 14th July, 1978, selected 18 of them for promotion to the post of Accounting Officer 2nd Grade, amongst whom there were included the interested  
5 parties but not the applicant.

The relevant part of the minutes of the respondent Commission regarding the sub judice decision (see enclosure 5A) reads as follows:

10 "The Commission as well as the Accountant-General put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service.

The Commission considered the merits, qualifications and experience of the above candidates, together with  
15 those of the candidates who were interviewed in the morning of the same day, as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.).

20 The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration.

The Commission observed that, during the interview,  
25 Ekaterini Chr. Georghiou, Kyriacos D. Stefanou, Demosthenis Mytilineos, Michael Afantitis, Christodoulos M. Christodoulou, Haralambos A. Yeroudes, Chrystalla Kyriacou, Alexandra Polycarpou, Iosif Nicolaou, Theodoros Solomou, Michael Melis, Demetrios Antoniou, Soterios Demetriou, Thomas S. Avraamides, Louiza  
30 Constantinou, Chrysostomos S. Manoli, Costas L. Agrotis and Costas I. Petrides gave very satisfactory replies to questions put to them and generally they proved to be the best candidates for appointment or promotion to the above post.

35 The Accountant-General stated that all the candidates referred to in the preceding paragraph (with the exception of Mr. C.I. Petrides) were serving in the post of Accounting

Officer, 3rd Grade, their services had been very satisfactory and that he considered them suitable for the post of Accounting Officer, 2nd Grade.

After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that the following candidates were on the whole the best for promotion to the post of Accounting Officer, 2nd Grade:" 5 10

Finally, on the 2nd December, 1978, the respondent Commission proceeded to fill only 15 vacancies and in selecting the interested parties, it stated the following at its relevant minutes (enclosure 6):- 15

("The Commission considered afresh the merits, qualifications, service and experience of all the candidates interviewed on 14.7.1978 (9 a.m. and 4 p.m.), as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.). 20

The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration. 25

After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Commission came to the conclusion that the following candidates were on the whole the best. The Commission accordingly decided that the candidates in question be promoted or seconded to the permanent post of Accounting Officer, 2nd Grade, w.e.f. 15.12.1978". 30 35

Counsel for the applicant submitted that the respondent Com-

mission in reaching the sub judge decision did not take into consideration the factor of seniority in respect of the candidates, contrary to the provisions of section 44(2) of the Public Service Law, 1967 (Law 33/67) and reference, in this respect, was made  
5 to the extracts of the minutes of the Public Service Commission hereinabove quoted (see enclosures 5A and 6).

It is correct that in the minutes of the respondent Commission, which are quoted above, no express reference is made to "seniority", though reference is expressly made to the  
10 "experience" of the candidates. This factor, together with other relevant factors, was taken by the respondent Commission into consideration in reaching the sub judge decision and was given due weight. This Court, on a number of occasions, decided that "experience" includes necessarily the notion of  
15 "seniority". Useful reference may be made, in this respect, to the cases of *Kolokotronis v. The Republic*, (1980) 3 C.L.R. 418, 428, and *Ierides v. The Republic*, (1980) 3 C.L.R. 165, decided by the Full Bench of this Court, where (at p. 179) Triantafyllides, P., in delivering the unanimous judgment of  
20 the Court, stated the following:

"It is convenient to mention, at this stage, that counsel for the appellant has complained that, though the respondent Commission has referred in its minutes to the factor of 'experience', it makes no reference to the  
25 factor of 'seniority'; and he has argued that because of the omission to refer, expressly, to seniority it should be concluded that no due weight was given to this factor though it is one of the three cardinal factors which, together with merits and qualifications, had to be taken into account.

30 There is, indeed, no express reference to seniority in the relevant minutes of the Commission, but it is stated, however, therein that 'all facts appertaining to each one of the candidates' were taken into consideration and, also, that 'the Personal Files and the Annual Confidential  
35 Reports of the candidates already in the service were also taken into consideration'.

There can be no doubt, especially in view of the presumption of regularity which is applicable in relation to administrative actions (see, inter alia, "*The Republic v. Ekkeshis*,

(1975) 3 C.L.R. 548, 556; that the seniority of all the candidates, including, of course, the appellant and the interested party, as appearing in their personal files, was taken into consideration in reaching the sub judice decision (and see, also, the decision of the Council of State in Greece in case 1341/1963, which is reported in “Επιθεώρησης Δημοσίου Δικαίου και Διοικητικού Δικαίου—Review of Public Law and Administrative Law—1963, Vol. 7, pp. 403, 404). Moreover, the notion of ‘experience’ must, reasonably, be taken to include that of ‘seniority’ ”.

In the present case, there can be no doubt that the Commission, having before it the personal files and the annual confidential reports of the candidates, and having taken into consideration, as it appears from its relevant minutes, the service, experience and the facts appertaining to each one of the candidates, had duly weighed the seniority of the candidates as well.

It has been further complained that the overwhelming seniority of the applicant over the interested parties was disregarded by the Commission without giving cogent reasons in this respect, as the applicant and the interested parties were more or less equal in merits and qualifications.

It has already been settled judicially that seniority is not a decisive factor, but one of the factors to be taken into consideration by the administrative organ concerned in selecting the most suitable candidate for a particular post, and that seniority prevails only when all other things are equal (see, inter alia, the case of *Bagdades v. The Central Bank of Cyprus*, (1973) 3 C.L.R. 417, 426, *Morphis v. The Republic*, (1975) 3 C.L.R. 255, 259 and *Ioannides v. The Republic*, (1979) 3 C.L.R. 628, 638).

From a comparative table placed before the Court (see enclosure 8) it is an undisputed fact that the applicant and the interested parties are more or less equally qualified. A matter which appears to be in dispute is the years of seniority of the applicant in the immediately lower post of Accounting Officer 3rd Grade. Counsel for the applicant argued that such seniority had to be assessed as from 1.10.1961 when the applicant was appointed as Auditor in the Greek Communal Chamber, because under the provisions of the Competence of the Greek

Communal Chamber (Transfer of Exercise) and Ministry of Education Law, 1965 (Law 12/65), officers serving with the Greek Communal Chamber were employed in the public service and, according to a relevant decision of the Public Service Commission, which was communicated to the applicant by letter dated 21.3.1970, his seniority is to be reckoned as from 1.10.1961, whereas counsel for the respondent submitted that the seniority of the applicant had to be assessed as from 1.1.1970 when the applicant was appointed to the post of Accounting Officer 3rd Grade.

Having in mind an affidavit sworn in this respect by Mr. C. Makrides, an administrative officer posted, at all material times, at the office of the respondent Commission, the contents of which I accept as correct, which is to the effect that the personal files and the annual confidential reports of all the candidates were put before the Commission during the whole procedure of the consideration of the sub judice promotions and that the comparative table (enclosure 8) was prepared for the purposes of the present recourse after the sub judice decision was reached and, bearing, also, into account the relevant minutes of the meetings of the respondent, I am of the opinion that every relevant factor in respect of the career and the service of the candidates, including the seniority of the applicant, was lawfully taken into consideration.

What now remains to be decided is whether, taking all other factors into account, the seniority of the applicant should have tipped the scales in his favour.

From a perusal of the annual confidential reports in respect of the applicant and the interested parties, I can make the following observations:

The applicant in his confidential report of 31.1.1977 for the year 1976 is equally rated as "Fairly Good" and "Very Good" in most ratable items and the observations of his Reporting Officer were to the effect that though he is a hard-working and conscientious officer, he lacks a certain amount of self-confidence. The Countersigning Officer's views, however, were to the effect that the applicant was exhibiting lack of interest in his work and ought to have made a really good effort before he could be considered for promotion.



In his annual confidential report dated the 24.1.1978 for the year 1977 the applicant is rated as "Good" and "Very Good". The observations of his Reporting Officer were to the effect that he performed his duties carefully but he lacked speed and was not methodical. 5

All the interested parties, except interested party M. Melis who was on probation from 2.8.1976-1.8.1978, are either better rated in their confidential reports, or had more favourable observations for their work by their Countersigning Officers or their Reporting Officers. In cases, though, in which interested parties are equally rated with the applicant, one notes that these interested parties have no unfavourable observations for their work, whilst such observations are to be found in the confidential reports of the applicant. 10

I would, also, like to refer to the recommendations made by the Accountant General, who stated that he had treated the services of the interested parties as having been very satisfactory and had considered them suitable for promotion to the post concerned and state that I find them adequate enough for the purposes of the present promotions and, therefore, the argument of counsel for the applicant that such recommendations are void as having been made in an irregular manner is hereby dismissed. 15 20

In view of what have already been stated, the applicant failed to persuade me that his seniority ought to have tipped the scales in his favour or that the relevant discretion of the Commission had been exercised in a defective manner justifying the interference by this Court. 25

I am clearly of the opinion that the sub judice decision was reasonably open to the respondent Commission and, therefore, the present recourse fails and has to be dismissed but with no order as to its costs. 30

*Recourse dismissed with no order  
as to costs.*